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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2023-000421

Southern First Bank……. Appellant,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, The Federal Housing Commissioner, The Department of the Treasury – Internal Revenue Service, and The South Carolina Department of Revenue……..... Respondents.

APPELLANT'S INITIAL REPLY BRIEF

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I. ARGUMENT & ANALYSIS

A. The Master Erred in Denying the Appellant the Relief to Which it was Entitled

The Appellant lays out its argument as to how and why the Master's ruling challenged in this appeal was made in err in their Initial Brief. Nothing in Respondents' brief changes that fact. Respondents go to great lengths to argue the judicial sales process if part of a creditor's "executing upon" its judgment and cannot proceed beyond the ten-year anniversary of a judgment's entry under controlling law, yet none of the statutory or case law cited and discussed in their brief actually supports its position when the specific legislative language and Supreme Court holdings are reviewed and considered.

First, as Appellant laid out in detail in its Initial Brief, the two Supreme Court Cases of *Garrison* and *Gordon* are distinguishable from the particular circumstances of this case and therefore, allow reversal of the Master's Order without modification or those rulings. (*See Ap. In. Br. pp. 9-13*). Respondents incorrectly assert that "[u]nder the precedent of our Supreme Court, if a judgment expires before the completion of the sale, the execution process simply ends without the sale being completed." (*Resp. Br. p. 8 citing Gordon* and *Garrison* in support). Neither of those cases, however, stands for that proposition as explained in Appellant's Initial Brief. (*See Ap. In. Br. pp. 9-13*). Respondents argue for and the Master erred in accepting, a broader application of those cases than their holdings permit which is the thrust of Appellant's argument in this regard.

Respondents argue that the sale of property through the judicial sales process "is the execution" which is required to take place within ten years from the date of judgment entry. (*Resp. Br. p. 7*). That is not what the statutory language cited for that proposition says, and it is not apparent that the sale is the execution of the judgment or rather the process resulting from the creditor's actions in pursuing collection upon that debt by "executing" upon it. Appellant contends

that the law needs to be clarified and common sense, and importantly equity, is best served and achieved by a definitive statement from the Court that "execution" of a judgment is the creditor's process of attempting to collect on it and that process is complete once the court orders relief as a result of those efforts.

B. This is the Proper Court for Resolution of the Issues on Appeal

Respondents inaccurately claim the Bank is seeking modification of Supreme Court precedent. (*Resp. Br. p. 10*). Appellant is not seeking to have this Court modify or overturn controlling Supreme Court precedent. Rather, the Bank is asking this Court to enter a ruling that it as a judgment creditor holding a judgment that was entered less than ten-years before the date the Master heard the Motion for Judicial Sale and could have ordered it proceed was entitled to that relief to satisfy the judgment even though the process through which that relief would be realized would run beyond the ten-year mark. The Supreme Court's rulings in *Gordon* and *Garrison* do not preclude such a ruling, and, therefore, reversal of the Order challenged in this appeal does not require alteration of those rulings.

Respondents also cite to *Linda Mc Co. v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (2010) which established an exception to the ten-year judgment bar and was subsequently overruled by the Supreme Court in *Gordon* in an attempt to bolster its argument on this issue. (*Resp. Br. p. 9*). Respondents again ignore the actual ruling in *Linda Mc* as it does nothing to support their argument and is distinguishable from the circumstances in this case. In that case, the circuit court entered an order to execute and levy upon debtors' assets to satisfy a judgment entered more than ten years beforehand. *Linda Mc Co., Inc.*, 390 S.C. at 550, 703 S.E.2d at 502-03. On appeal, the Supreme Court ruled that a creditor need only "take action to enforce a judgment within the ten-year statutory period of active energy" to be entitled to collect upon it through some judicial means. *Id*.

Here, the circumstances were much more narrow than the exception established in *Linda Mc* and overturned by *Garrison* allowed. Here the Bank sought and the Master could have ordered relief to which it was entitled as a judgment creditor holding a judgment that was less than ten years old at the time. Appellant contends it was an error for the Master to refuse to do so. Despite Respondents' arguments otherwise, the overturned holding in *Linda Mc* does not upend the Appellant's argument that the Master erred in denying the Bank relief to which it was indisputably entitled. Therefore, under the clear law, the Master could and should have ordered the relief sought.

C. The Master Erred by Not Taking into Account Respondents' Dilatory Tactics that Delayed the Collection Process

Appellant's arguments to this Court asking it to consider how the debtors conducted themselves in avoiding paying their debts is not vitriolic, sophomoric, or some desperate attempt to make an argument for reversing the Order unsupported by the law, facts, or logic as the Respondents contend, expressly and implicitly. The Bank's advocacy on this issue is one of opportunity it has taken to address practices that warrant consideration and addressing by the judicial body most impacted by them. Practicality, reality, and good common-sense policy form the basis of these arguments. Appellant believes this case presents the Court an opportunity to address these practices directly and ensure they end, or at least, are drastically reduced. Then, and only then, can this Court best ensure it is utilized to fulfil its intended purpose rather than as a strategic mechanism for running out the clock on judgments. Appellant agrees that not every unsuccessful argument, defense, or litigation is frivolous or amounts to bad faith. Otherwise, the stakes of our litigation system rooted in oppositional advocacy would be fundamentally, and detrimentally, altered. That said, failure of particular arguments is an important factor to consider when evaluating whether it was made in good faith. Here, Respondents did not make any substantive arguments to this Court on their many appeals. They just filed notices, extension

requests, and motions asking for this Court to stay the lower proceedings when the clear law did not allow for it.

The difficulty Appellant faces in this case is that many of the actions it deemed frivolous or undertaken in bad faith cannot be determinatively established as such under the circumstances, and certainly not under the high bar tests advocated by the Respondents on brief, because Respondents did not make any actual substantive arguments in support of them. Specifically, the Respondents' numerous appeals of some Four orders but never had a substantive filing submitted articulating the legal basis for their claims of err. All the record can establish is that Respondents appealed every order entered from July 11, 2022 to February 2, 2023 and did not type a word to this Court saying how and why the lower court's decisions were flawed. That is true despite having many months to do so. Instead, the only thing the Respondents did was file notices of appeal and ask for extensions to avoid having to explain why every one of the Master's orders they challenged warranted reversal or modification by this Court. The only thing Respondents did with the appeals was use them to advance arguments they stayed the lower court proceedings. Those arguments, however, as addressed in more detail below, can be definitively shown to be and characterized as frivolous or in bad faith given the clear language of the automatic stay rule embodied in SCACR 241 which clearly excepts proceedings to collect money judgments from being halted by filing of an appeal on an order entered in those proceedings.

Luckily, in addressing their actions on brief, the Respondents shed some light on the supposed basis of their various appeals, illustrating their frivolous and bad faith nature Appellant argues should have been taken into account by the Master.

First, Respondents' arguing the appeals stayed the supplemental proceedings preventing the Master from ordering the judicial sale were not good faith arguments considering the clear

language of the automatic stay rule embodied in SCACR 241 and the statutes cited within it. That Rule is the controlling and clear rule on whether an appeal stays a lower court proceeding, and if so, to what extent. It expressly provides that:

> As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order...on appeal, and to automatically stay the relief ordered in the appealed order...The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

SCACR 241(a). If subpart (b) did not exist, then Respondents could make a good faith argument their appeals prevented the Master from proceeding. Subpart (b), however, exists and provides for a litany of exceptions to the automatic stay rule, including proceedings for collection of "(1) money judgments as provided in S.C. Code Ann. § 18-9-130 [and] (4) Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. 18-9-170....". SCACR 241(b). That is what the underlying action was in this case.

S.C. Code Ann. § 18-9-130 entitled "Effect of notice of appeal on execution of judgment; sale of defendant's property; appeal in civil action involving signatory of Master Settlement Agreement" expressly states that "[a] notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution." Respondents did not obtain a stay from the Master, nor did their attempts to have this Court enter a stay succeed. That is because the law provides that proceedings to collect on a money judgment are not stayed by an appeal and, can only be stayed if the presiding judgment grants a stay. This is the clear law, and without regard for it, Respondents claimed time and time again that their appeals deprived the Master of jurisdiction and acted to stay the proceedings below.

Second, Respondents inaccurately contend actions to enforce a judgment lien "sound at

law" making it "arguable that there is a right to a jury trial in such an action." and, therefore, their challenge to the order joining parties and on the mode of trial was in good faith. (*Resp. Br. p. 14*). Review of the applicable law and Respondents' own brief show otherwise. The underlying action was equitable and sought in a court of equity. Respondents themselves recognize this in their "Standard of Review" section stating that "[s]upplemental proceedings for judgment collection 'are equitable in nature.'" (*Resp. Br. p. 6 citing Ag-Chem Equip., Co. v. Daggerhart*, 281 S.C. 380, 383, 315 S.E.2d 379, 381 (Ct. App. 1984). Yet, eight pages later they claim it is "arguable" those same proceedings sound in law, entitling them to a jury trial, and as such justified their appeal of orders denying or somehow affecting this non-existent right. Stated differently, Respondents' own brief undermines the foundational premise of this argument, and by making it, reflects the absence of any good faith basis for their challenge to the orders concerning the mode of trial.

Third, Respondents make the unsupported circular argument that the supplemental proceedings were "in reality a suit on a note, which is an action at law" because the Respondents claimed they were not served with process in the suit that produced the judgment. *Id*.[1] Whether Respondents were properly served in the suit that produced the judgment does not transform the equitable nature of the supplemental proceeding undertaken to collect that judgment. If Respondents succeeded in establishing they were not properly served in the case on the note and the law afforded a viable means for vacating the judgment resulting from it, then and only then would they be able to advance a good faith argument that inadequate service impacted the supplemental proceeding action. They did not do that and offer nothing showing they could or

[1] This argument fails outright for the simple fact that the Vilchecks filed an Answer to the Complaint in that case and demanded a jury trial. 11.18.21 Answer. In making a general appearance and answering the Complaint, the Respondents submitted to the jurisdiction of the court and waived any ability to argue they were not sufficiently served with process. *South Carolina State Highway Dept. v. Isthamian S.S. Co.*, 210 S.C. 408, 43 S.E.2d 132 (1947).

would have done so. Then, relying on these contentions, (including the most important one they recognize several pages earlier as being utterly incorrect - that the supplemental proceedings sounded in law rather than equity) Respondents claim that "[p]ursuing an appeal on this rather nuanced issue does not meet the test of bad faith or frivolity." *Id*. There was no legitimate legal issue in this regard, much less a nuanced one, the existence of which would require supplemental proceedings to be deemed actions at law rather than the equitable process they indisputably are. The alleged "nuanced" issue is manufactured, lacking legal or factual basis and, outright contradicted by Respondents themselves. Appealing a nonexistent issue, the legitimacy of which rests upon a legal foundation Respondents know to be inaccurate does in fact amount to bad faith. To argue otherwise in an attempt to justify these actions through unsupported and circular reasoning illustrates the baselessness of the Respondents' appeals noted in Appellant's Initial Brief.

Fourth, filing for briefing extensions alone would normally not warrant mention. Appellant counsel fully understands and empathizes with practicing law in a small firm and the need to file briefing extensions in many instances. That said, it is noteworthy that the First Appeal was filed on July 11, 2022, multiple extensions requested, followed by a motion to consolidate with the later filed Second Appeal, without a single substantive brief ever being submitted. Considering those facts, it is pertinent that Respondents did not submit any briefing on the orders appealed in the Second Appeal either. It establishes a pattern of behavior, when considered as a whole in the context of the case, reflects a litigation strategy of utilizing this Court as a stall tactic rather than for resolution of legitimate legal issues. Respondents challenged every order the Master entered starting with October 21, 2022 and never wrote a single sentence to this Court explaining why those rulings were flawed. Instead, they utilized the fact that they had appealed the Master's orders

to argue he was deprived of jurisdiction and unable to grant the relief Appellant's sought in their Motion for Judicial Sale or through other motions despite the clear law to the contrary. Respondents admit as much and detail the basis for their persistent arguments to the Master that their appeals rendered him unable to do much of anything in the supplemental proceeding action until this Court resolved them. When the Master was finally convinced Respondents were undeniably wrong, they petitioned this Court to prevent him from proceeding by filing a motion to stay until all the appeals were resolved; something that would not occur for a long time after the judgment reached its ten-year anniversary. This Court rightfully rejected that invitation, and when Respondents asked for a full panel review of that decision, denied it in an expeditious fashion.

This is all to say, the Master should have considered the Respondents' actions under the totality of the circumstances and not rewarded their dilatory tactics that utilized this Court as its primary tool to run out the judgment clock.

D. Appellant Has Not Advanced New Arguments Or Sought Sanctions In This Appeal

Respondents contend that the Appellant is attempting to "make a new record and advance new arguments" on appeal concerning "whether the Vilchecks engaged in sanctionable conduct and seeking sanctions from this court" for it. (*Resp. Br. p. 17*). Appellant flatly disagrees. Notably, Respondents' argument on this issue goes on to cite some applicable law and make general claims that the Bank designated matters for inclusion in the record on appeal that were not presented to the lower court, and relies on "this improperly designated matter proves the correctness of its position." (*Resp. Br. p. 18*). Respondents, however, do not specify what item they are referring to, the argument supposedly advanced upon it, or even cite to pages within Appellant's brief where this was allegedly done. That makes it impossible to substantively address in response. Instead, Respondents conclude their argument on this issue by contending the Bank should have moved for

sanctions or pursued the Vilchecks for abuse of process if it thought their actions warranted,[2] and "[t]his appeal cannot be substituted for such a proceeding." (Resp. Br. p. 19). The Appellant agrees and is not seeking sanctions in this appeal. It choosing not to do so in the underlying actions, however, is not a concession that the Vilchecks did nothing warranting sanction or independent action for abuse of process. It merely reflects Appellant's decision to pursue collecting on its judgments and forego tangential sanctions motions or abuse of process claims.

E. The Record Indisputably Establishes the Vilchecks' Actions Resulted in a Delay

Respondents somehow claim that the delay in the Master hearing and ruling upon the Motion for Judicial Sale had nothing to do with their actions. (*Resp. Br. pp. 19-20*). The undisputed record shows this to be utter nonsense. The record reflects that the Respondents' filing of their numerous appeals, arguments to the Master they deprived him of jurisdiction and stayed the lower court proceedings, and once those efforts were finally overcome before the Master, filings in this Court to halt the collection process all caused a delay in the lower court action. This delay attributable to the Respondents is noteworthy because the Master denied ordering the judicial sale because it would not end until a mere eight days after the judgment reached ten-years. Respondents' stalling efforts certainly kicked the can down the road more than eight days.

F. Appellant Preserved its Arguments for Appellate Review

Preserving an argument for appellate review generally requires it be raised to and ruled upon by the lower court. *See I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 421-22, 526 S.E.2d 716, 724 (2000)(Appellate court will generally not address an issue unless it is raised to and ruled upon by the trial court.). That happened in this case. Respondents know that to be true but try to convince this Court otherwise.

[2] The Appellant did file a Motion for Sanctions in July 2022, however, it was never heard nor ruled upon by the Master. (**Mot. Sanctions July 2022**).

Respondents' blanket statements and attempt to have the Court apply general preservation rules without recognition of exception or nuance to argue one or more arguments advanced on appeal were not properly preserved below. (*Resp. Br. pp. 20-23*). Respondents summarily claim that Appellant did not preserve any of its arguments for review with a lone exception -"that merely a hearing must be held before the end of the judgments' 10-year period" to entitle the creditor to relief. (*Resp. Br. p. 20*). That argument, they contend, was likewise unpreserved due to it being made for the first time in Appellant's motion to reconsider according to the Vilchecks. *Id*. Everything else, according to the Respondents, was never raised to and ruled upon by the lower court. That is not the case and every argument advanced on appeal was properly preserved for review.

First, Appellant argued for entry of an Order for Judicial Sale of the Property and advocated to the Master that the law allowed him to order that relief at any time before the judgment reached its ten-year entry anniversary. (**10.21.22 Motion for Judicial Sale; 02.03.23 Hearing Tr. p**. **16**). The Master ruled upon those arguments denying the motion when he entered the Order now challenged on appeal on February 9, 2023. (**02.09.23 Order Denying Jud. Sale**). That Order contained the legal sources, reasoning, and other basis underlying the Master's holding challenged in this appeal, including the determination that he could not order judicial sale of Respondents' property even though Appellants were entitled to that relief because the judicial sales process effectuating it would end several days after the judgment's ten-year anniversary. (**02.09.23 Order p. 7**). This was the first time Appellant did and possibly could have learned of the Master's ruling and the legal basis and reasoning underlying it lacking clairvoyant abilities. Then and only then did the Appellant have an opportunity to address the errors in that Order through a subsequent motion under Rule 52 and/or 59. As a result, the first opportunity to make these arguments

challenging the Order at issue was through post-order motions. That is precisely what Appellant did eleven days later filing a motion under both Rule 52 and 59 seeking to have the Master alter his ruling. (**2.14.23 App. Mot. Recon.**). Importantly those Rules are indistinguishable. A Rule 59 Motion is what is colloquially referred to as a "Motion to Reconsider" whereas, Rule 52 is another mechanism for challenging a court's order entered without a jury that expressly contemplates and provides for advancing new arguments to address the particular findings of fact and conclusions of law in the judgment or order. Rule 52(b) provides that:

> Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly....When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.

SCRCP 52(b). It is important to note that Rule 52 is made for situations such as the one at hand; where a judge or Master is tasked with making final rulings in a nonjury proceeding. It, therefore, requires the judge enter an order with specific and separate findings of fact and conclusions of law thereby allowing an aggrieved party to argue those findings and/or holdings based upon them are flawed and warrant alteration. That necessarily includes making new arguments never advanced until the movant was faced with a ruling it contends was affected by legal or other error. Subpart (b) permits a party to challenge the court's findings of fact and conclusions of law in that order through a motion, and expressly allows the movant to assert new arguments not advanced before the Order they are aimed at challenging and convincing the court to alter was entered.

Appellant's February 14th Motion was two motions in a single filing – one for reconsideration under Rule 59 and another for amendment of the Order under Rule 52. (**02.14.23 Mot. Recon. & Amend**). It is undeniable the law allows for advancing new arguments in a Rule

52 motion to challenge the court's judgment/order. Therefore, to the extent any argument Respondents insist or this Court finds was first advanced in the February 14th motion filing, it is properly preserved for appeal.

That Motion expressly advocated for reversal/modification of the Master's ruling by arguing, among other things, that Respondents' defense tactics outlined in Appellant's Initial Brief should not be rewarded with an Order allowing them to avoid paying their debt (one they can afford for that matter), stating in part that "To reward such tactics and petty strategy makes light of the rule of law in this State and carries a very low view of available relief for creditors and promotes further frivolous appeals in our overcrowded docket." (**Mot. Recon. & Amend p. 9**). That is precisely the argument advanced by Appellant on appeal which was made to the lower court at the first possible opportunity and ruled upon by the Master when he denied the Motion a day after it was filed. (**02.15.23 Order Deny Mot. Recon**.). Therefore, the Appellant's argument that the Master erred by rewarding and failing to account for the Respondents' dilatory and untoward tactics that can be described with any variety of negative adjectives including "frivolous" "bad faith" and the like, was adequately preserved for appeal.

G. The Appeal is Not Moot

Respondents have already unsuccessfully argued to this Court that the appeal is moot and should be dismissed. (**Mot. Dis. Appeal**; **Briefing on same**). This Court denied Respondents' motion finding that the appeal was not moot. (**Ct. App. Order Denying Mot. Dismiss**). Nothing since the Court's earlier ruling has changed warranting a different holding. On brief Respondents restate the same unsuccessful arguments for mootness made in their Motion to Dismiss which were rejected by this Court. (*Resp. Br. pp. 23-24*). The only new argument made on brief—that *res judicata* bars any further action in the underlying matter thus rendering the appeal moot—fails for

a variety of reasons.

Respondents argue that an intervening event rendered the appeal moot because, they claim, the doctrine of *res judicata* bars the Master from ordering judicial sale of the Property even if this Court were to reverse the Order on appeal. (**Resp. Br. p. 23-24**).[3] The linchpin of their argument is the Stipulation of Dismissal with Prejudice of a separate foreclosure action entered well after this appeal was filed. *Id*.[4] As a result of that stipulation, they argue, *res judicata* applies to totally bar the Master from ordering judicial sale of the property. Respondents are mistaken.

> Res judicata bars ***subsequent actions*** by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of *res judicata*, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit."

Judy v. Judy, 393 S.C. 160, 171, 712 S.E.2d 408, 414 (2011).[5]

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[3] The cited Stipulation was not an appropriate filing to submit to this Court nor is it rightfully a part of the present appeal in any respect. The subsequent dismissal of the foreclosure action months after the Master issued the Order challenged in this appeal (and this appeal filed) has nothing to do with whether the Master erred in making his challenged holding(s). It should not be considered in any respect by the Court.

[4] It is important to contextualize the Stipulation of Dismissal of the foreclosure action. Appellant initially filed that action seeking to foreclose on Respondents' property to satisfy the debt. Respondents claimed they were entitled to a jury trial in that equitable proceeding and appealed the Master's ruling on the mode of trial along with other orders. That stalled the process of the foreclosure action with Respondents successfully convincing the Master he could not do anything further until this Court made a ruling. The Appellant then had to seek redress through other avenues and pursued collection through supplemental proceedings and the judicial sale process. Ultimately the foreclosure action did not get beyond initial stages. After this appeal was filed and the judgment's ten-year mark passed, there was no viable way for the Appellant to advance the foreclosure action beyond a preliminary posture because the judgment had expired. Accordingly, Appellant did the ethical, good faith thing and agreed to dismissal of that action. It is troubling to say the least that Respondents have now taken that good faith action of agreeing to end a dispute that could go nowhere and utilized it as a sword to argue Appellants are barred from any relief even if this Court were to reverse the Master.

[5] "Our supreme court's recent discussion of *res judicata* in *Judy* acknowledged that there are certain circumstances in which the policy underlying the doctrine of res judicata is outweighed by a more compelling policy; there, the court looked to the Restatement (Second) of Judgments § 26

Res judicata would not prevent this Court from reversing the Master's Order and him entering a new one ordering judicial sale of Respondents' property as the Vilchecks contend. Their argument fails in light of clear case law regarding when the doctrine applies and to what it bars litigants from doing.

First, under the circumstances of this case, *res judicata* does not apply to the underlying supplemental proceeding action. Reversal of the Master's Order and his subsequent entry of a new one ordering the judicial sale of the Property would not be a subsequent or new action nor would it require relitigating the same claims, factual or legal issues. The supplemental proceeding action has been fully litigated and Appellant's motion through which they would obtain relief by satisfying the judgment heard by the lower court. This appeal challenges the denial of that Motion. If successful, all that will happen is the Master enter a new order for judicial sale of Respondents' property. It, therefore, is of no consequence that the foreclosure action was dismissed earlier this year. If, on the other hand, Appellant did not already file and litigate its claims in the action underlying this appeal, then serious consideration would need to be given to whether the doctrine applies and if any countervailing policy concerns warrant an exception. None of that analysis is necessary in this case given the circumstances. Respondents' *res judicata* argument is advocating for an oversimplified and incorrect application of the doctrine which should not be accepted in the first instance, and if it were, indisputably would not achieve the purpose of the doctrine.

Finally, assuming *arguendo res judicata* could apply, doing so would fail to achieve the purpose of the doctrine—preventing re-litigation of the same claims adjudicated or which could have been adjudicated in a prior action.

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for guidance on those circumstances in which courts should decline to apply res judicata." *South Carolina Pub Int Found.*, 401 S.C. at 390.

II. CONCLUSION

For the reasons outlined in Appellant's Initial Brief and above, it respectfully requests this Court reverse the Master's Order and clarify what are important aspects of collection law that remain mired in the grey.

Respectfully Submitted,

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PROOF OF SERVICE

The undersigned hereby certifies that on January 3, 2024, he served the foregoing Appellant's Initial Reply Brief by emailing a copy to the persons below listed for opposing counsel on AIS pursuant to SCACR 262 as amended by the Supreme Court's August 25, 2021 Order, addressed as follows:

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